UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/C.12/1990/SR.4
12 February 1990

ENGLISH
Original: FRENCH

COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Fourth session

SUMMARY RECORD OF THE 4th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 17 January 1990, at 10 a.m.

Chairman: Mr. BADAWI EL SHEIKH

CONTENTS

Organization of work (continued)

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Official Records Editing Section, room E.4108, Palais des Nations, Geneva.

Any corrections to the records of the meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

GE.90-15189/1528B

The meeting was called to order at 10.25 a.m.

ORGANIZATION OF WORK (agenda item 4) (continued)

1. Mr. ALSTON recalled the following proposals made at the previous meeting: (a) that the Committee should request the Economic and Social Council to examine its report in depth and that a member of the Committee should be more closely involved in the Council's work; (b) that the Committee should include in its agenda an item entitled "Review of current developments" and that the Secretariat should prepare a note on the subject; and (c) that the Committee should again request the Economic and Social Council to authorize the pre-sessional Working Group to meet sufficiently in advance of the Committee's session. Furthermore, the idea of an Optional Protocol to the International Covenant on Economic, Social and Cultural Rights appeared to be gaining ground, and it was perhaps desirable for a member of the Committee to take responsibility for gathering proposals in that connection. He recalled, however, that some members of the Committee had expressed reservations on that point and counselled caution. In his view, the Secretariat should be requested to draft a brochure on the Committee's activities providing information to the general public. Lastly, he considered that outside expertise should be enlisted for the general discussion on article 11.

2. Ms. IAYA observed that if the Committee's work was to be made more efficient, it was necessary to analyse the nature of economic, social and cultural rights, which in her view could be broken down into three levels: (1) rights corresponding to the basic needs of human beings; (2) the economic, social and cultural rights embodied in national legislation; (3) the ideal situation in regard to economic, social and cultural rights.

3. Fundamental rights were those of which no human being could be deprived, whatever his nationality, and it was the role of international mechanisms to ensure that they were effectively complied with. Moreover, in article 2 (1), article 11 (1) and (2) relating to the right to adequate food, clothing and housing and the right of everyone to be free from hunger, and articles 22 and 23 on international co-operation as an effective means of ensuring its implementation, the Covenant made provision for international co-operation and assistance in order to meet the fundamental needs of man. The major international instruments such as the Charter of the United Nations, the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States and the Covenants themselves had ushered international co-operation into the sphere of international law. The recent adoption of the Declaration on the Right to Development seemed to indicate an even more pronounced trend towards international co-operation for the effective implementation of those fundamental rights.

4. Hitherto, the work of the Committee had focused on the realization of economic, social and cultural rights in various countries rather than on international co-operation with developing countries. Such co-operation did not always correspond to the needs of the population of the countries concerned, and international and bilateral co-operation were at pains to harmonize their efforts. Under such circumstances, the Committee might make itself more useful by adding to its general guidelines an item relating to requirements in the field of international co-operation. In their reports, States parties, and in particular the developing countries, would describe

under that item current international co-operation programmes aimed at meeting the fundamental needs of the population together with the type of assistance required in the future. The Committee would thus be able to put forward more specific recommendations to the Economic and Social Council.

5. An Optional Protocol would make it possible for ordinary citizens to make themselves heard directly. However, at the present juncture the majority of States parties did not seem ready to consider that possibility. Whatever the case, the Optional Protocol should be limited to cases of gross, continuous and systematic violations of human rights, in accordance with the procedure established by Economic and Social Council resolution 1503 (XLVIII).

6. Mr. ALVAREZ VITA expressed his surprise that the proposal he had put forward on the previous day had not been mentioned by Mr. Alston at the beginning of the meeting. He also inquired, in respect of the reservations made by certain members of the Committee with regard to an Optional Protocol, as to the meaning of the "caution" recommended, as in diplomatic language, caution was akin to inaction. If any body was competent to draft such a protocol, it was the Committee, and it should apply itself to the task without delay, bearing in mind the enormous efforts that had been required to draft the Optional Protocol to the other Covenant.

7. Mr. NENEMAN remarked that the Committee's role was not to legislate but to ensure the implementation of international legal norms, through a dialogue with Governments. Since States were directly concerned by any new international instrument, legislation could only be formulated by a body on which States were represented. Such was not the case with the Committee, which comprised experts.

8. He recalled that States were generally represented at the sessions of the Economic and Social Council by non-specialist diplomats and suggested that it would be useful if the Committee were able properly to inform them of its activities, particularly in the light of the 1990 review. In doing so, the Committee should nevertheless take into account the actual situation and bear in mind that a number of countries with extremely ambitious social programmes were experiencing economic difficulties.

9. As part of the effort to draw the attention of the Economic and Social Council to the importance of economic, social and cultural rights, the Committee could find natural allies among some specialized agencies, in compliance with article 18 of the Covenant.

10. Lastly, he noted that at the current session approximately one third of States parties had withdrawn their reports at the last moment and suggested that the Committee should line up more reports so as to avert a repetition of the current situation, in which it had been taken unawares.

11. Mr. TEXIER said that the question of an Optional Protocol deserved closer attention and proposed an examination of the Committee's role. It was necessary to qualify Mr. Neneman's remark that the Committee's mandate was to implement international law and not to legislate, by recalling, for example, that judges also had a law-making role through the establishment of legal precedents. While it was true that the Committee was not empowered to legislate, it was in a position to put forward proposals, as there were few bodies, with the exception of the Committee, that dealt with the fundamental

nature of the rights laid down in the International Covenant on Economic, Social and Cultural Rights and with the potential evolution in the implementation of that instrument. The Economic and Social Council was unquestionably the decision-making body, but the Committee should take advantage of the reports submitted to it by States, as well as of the personal observations made by its members and of the documents at its disposal, to make a more searching examination of the nature of the rights embodied in the Covenant and of the Covenant itself.

12. With more specific reference to the possibility of drafting an Optional Protocol, he observed that the Committee was in a different position to the Human Rights Committee. That Committee had been set up pursuant to the International Covenant on Civil and Political Rights, which had even determined its composition, role and mode of operation. Such was not the case with the International Covenant on Economic, Social and Cultural Rights: the Committee on Economic, Social and Cultural Rights owed its existence to the Economic and Social Council, not to the Covenant itself. Consequently, there were grounds for examining the possibility of amending the Covenant in order to endow the Committee with decision-making power comparable to that of the Human Rights Committee. In the meantime, it would be premature to consider drafting an Optional Protocol.

13. Lastly, addressing the role of the Commission on Human Rights and of the Sub-Commission, he noted that while the Commission, which was a body composed of Government representatives, was responsible for adopting decisions, the Sub-Commission, which was composed of independent experts, possessed considerable power to put forward proposals and that the Commission owed many of its resolutions and decisions to ideas conceived by the members of the Sub-Commission. Like the Sub-Commission, the Committee could also become a force for putting forward proposals.

14. Mr. RATTRAY said that for the first two days the Committee had focused on the measures it might adopt to render the implementation of the International Covenant on Economic, Social and Cultural Rights more effective. However, the responsiveness of the international community appeared to vary according to whether the rights concerned were civil and political or economic, social and cultural rights. That was perhaps attributable to the inadequate measures taken to ensure a universal understanding of the indivisible nature of human rights. The idea of preparing an Optional Protocol was merely a reflection of the desire to ensure that human rights as a whole were more effective.

15. There were indeed limits to the Committee's competence, but he considered that, in view of its experience, the Committee was justified in making recommendations concerning the measures it found conducive to improving the implementation of the Covenant, including the preparation of an Optional Protocol. Such an initiative would not necessarily require any amendment of the Covenant itself. However, if that were necessary, the amendments should cover all aspects of the implementation of such an Optional Protocol.

16. The Committee had initiated a process of innovation, marked by the constructive dialogue in which it endeavoured to engage States parties in order to encourage them gradually to adopt the necessary measures to ensure respect for human rights, while keeping its sights on what was its essential task at the current stage in its existence, namely the search for criteria making it possible to assess respect for economic, social and cultural rights, and hence the implementation of the Covenant.

READEX FICHE

17. Accordingly, he echoed the calls for caution made by other speakers. The Committee would be setting out over dangerous ground if it considered preparing an Optional Protocol before it had defined the minimum standards enabling it to establish violations of economic, social and cultural rights. In the meantime, several courses of action were open to it: it could alert the international community by requesting the Centre for Human Rights to devote greater attention to economic, social and cultural rights; it could promote the establishment of national groups to protect economic, social and cultural rights; it could draw the attention of members of the Economic and Social Council to issues set before it; and, finally, it could give its Chairman or his representative the task of making the council more familiar with the Committee's work.

18. Lastly, the Committee could follow the example of defenders of civil and political rights and assert the need for "greater democracy" which it could adopt as its rallying cry. In that connection, he echoed the suggestion made by Mr. Neneman and said that UNESCO, ILO, UNEP and Habitat were the Committee's natural allies.

19. Mr. KONATE expressed reservations on two concepts employed by previous speakers: that of "basic needs" mentioned by Ms. Taya and that of "minimum standards", just mentioned by Mr. Rattray. However attractive those concepts, they ran the risk of undermining the indivisible and interdependent nature of human rights, and he felt that they constituted too shaky a foundation for attempting to decide on the effective implementation of the Covenant. As article 4 of the International Covenant of Civil and Political Rights authorized a number of derogations from its provisions, it no doubt gave grounds for concluding that the rights embodied therein were of differing importance. However, no such provision was made in the International Covenant on Economic, Social and Cultural Rights, which was consequently more complex and cumbersome to apply.

20. The idea of adopting an Optional Protocol appeared premature, in that the Committee was still seeking to gain recognition as an independent body and trying to interest the Economic and Social Council in its work. It would be more prudent for it to limit itself to general observations on the provisions of the Covenant in order better to establish its scope, and possibly, by so doing, to create the law.

21. As far as methodological considerations were concerned, he recalled a common-sense rule: it was indeed possible to bring the Optional Protocol into being on a conventional basis, i.e. by amending the Covenant, but a mere decision by United Nations bodies would achieve the same objective. From a formal angle, the adoption of an Optional Protocol should not pose any problems. However, as far as substance was concerned, he was wary of any such initiative and exhorted the Committee first of all to carry out the mission with which it had been entrusted by the Economic and Social Council.

22. With regard to organization of work, he regretted that members of the Committee should speak on matters that did not appear on the programme of work and without previously submitting a written text to enlighten the other members of the Committee and facilitate a constructive debate. The advocates of an Optional Protocol could have put down in writing their arguments on behalf of such an initiative.

23. Mr. MUTERAHEJURU said that in order for the Committee to be truly effective and to play a role that was genuinely useful to States parties and to individuals, it was first of all necessary for the results of its work to receive proper attention, which was far from being the case at the current time, since the Economic and Social Council had so far never examined the reports submitted to it by the Committee, but had merely taken note of them. The solution whereby consideration of the reports of most of the bodies responsible for monitoring the application of international human rights instruments was entrusted to subsidiary organs of the Economic and Social Council was not a satisfactory one.

24. The issue that could in fact be discerned, beneath that of the Committee's effectiveness, was that of its competence, which had perhaps not been sufficiently clearly defined, as well as the mission it should carry out and the raison d'être of the reports it prepared.

25. The Economic and Social Council was due to review the work of the Committee in May, and it should be requested to carry out as thorough a review as possible, to specify the Committee's mandate, its usefulness and the importance attached to its reports, and to give its backing to the work undertaken by the Committee, in order to allow it better to find its feet and to know what to expect. The Committee was currently little known to the general public, although if its importance was to receive greater recognition downstream, it first of all needed to achieve it upstream. Once that problem had been solved, solutions would be found to the other problems that ensued therefrom.

26. It would perhaps be preferable to await the outcome of that review by the Economic and Social Council before considering the preparation of an Optional Protocol. Such an instrument would only be of use to the Committee if its work was appreciated, which was currently far from certain.

27. Mr. FOFANA observed that many occasionally contradictory suggestions as to how to strengthen the Committee's position and enable it to perform more effectively had been put forward. He felt that it was in the Committee's interest for it to be represented at the next session of the Economic and Social Council. The Committee should also take advantage of the information campaign launched by the Under-Secretary-General for Human Rights in order to make both States parties and public opinion aware of the importance of the Covenant. Finally, even if the members of the Committee were not unanimous on the question, it was by no means too early to consider the drafting and preparation of an Optional Protocol. No one was in a better position than the Committee to carry out that task, which should, nevertheless, not take up as much time as the preparation of the guidelines. Even if the drafting of such a Protocol were entrusted to others, the Committee's contribution to that endeavour would be fundamental.

28. Mr. CLAIEL said that it was certainly possible to start considering the possibility of preparing an Optional Protocol, but it would be premature to begin the task in earnest. Furthermore, he was not certain that the Committee, which was composed of experts, was empowered to decide on its own to prepare new instruments. As was the case with all the international human rights treaty bodies, the Committee was answerable to higher organs on which the representatives of States sat and such decisions were in principle the prerogative of those organs, although they could if they so wished request a

specialized body - committee or ad hoc body - to prepare a draft text. Any instrument that was binding upon States should be adopted by the representatives of States. He did not share the doubts expressed by Mr. Neneman in that respect. It mattered little whether the delegations of States to the higher organs did not always include experts. Whenever there was a question of adopting a protocol or any other such instrument, the members of the delegations, whether they were ambassadors, first secretaries or embassy attachés, always consulted their Government's experts before deciding, and if they gave their agreement, they did so on behalf of the State that they represented, whose commitment they were able to give.

29. The comparison drawn by Mr. Texier with the Sub-Commission on Prevention of Discrimination and Protection of Minorities had only limited validity, as no one would wish to see the Committee take the same path as the Sub-Commission.

30. For the time being, the Committee should essentially focus on the various tasks assigned to it and endeavour to convince the States parties to submit their reports on time.

31. Mr. SIMMA endorsed the remarks made by Mr. Rattray. As far as the issue of the Optional Protocol was concerned, he was disturbed by the turn taken by the debate. After an exchange of views, he and Mr. Alston had reached the conclusion that those who had put forward the idea could draft a sort of working paper on other possible methods of implementing the Covenant. The idea of an Optional Protocol or of an implementary mechanism similar to that developed for the International Covenant on Civil and Political Rights had already been examined, without any result, by a number of United Nations bodies. The idea had also been considered by the Council of Europe and the Conference on Security and Co-operation in Europe. Furthermore, the members of the Committee were no doubt aware of the difficulties that would arise from the preparation of an instrument such as an Optional Protocol. It was perhaps preferable, for the time being, for the Committee to restrict itself to a working paper on other methods that could be used to implement the Covenant, which would also review the obstacles encountered in the past in the sphere of civil and political rights. Whatever the case, he would not support, at least at the current session, the idea of preparing an Optional Protocol.

32. On the subject of countries that had decided at the last minute not to present their report, he felt that the circumstances to which those withdrawals were attributable would probably not be repeated the following year. In view of developments in Panama, it was hardly surprising that the Government of Panama had decided not to present its report, and a similar decision was to be expected from Afghanistan and Iran. Consequently, he endorsed Mr. Neneman's suggestion that in future a number of reports should be held in "reserve" to offset withdrawals. In any event, the problem would no longer arise once the Committee had adopted a new reporting cycle, an issue which was moreover on its agenda and on which the Secretariat had drafted a document that the Committee should examine without delay.

33. In conclusion, he invited the members of the Committee to focus their attention on items of the agenda which required more urgent consideration than the issue of a possible Optional Protocol.

34. Mrs. JIMENEZ BUTRAGUEÑO said that she had found Ms. Taya's statement particularly interesting, and expressed the hope that she would put down in writing her suggestions regarding the three levels of human rights to which she had alluded. She also endorsed Mr. Neneman's remarks concerning the consideration of reports. All procedures designed to improve the methods by which reports were considered deserved attention, and the Committee should inform Governments exactly what it expected from them.

35. With regard to the question of an Optional Protocol, she thought that it would perhaps be preferable to amend the Covenant, as the Economic and Social Council would probably take the view that the idea of preparing such an instrument was over-ambitious. She asked what was the opinion of the representative of the Secretary-General on that point.

36. Finally, she too thought that it would be important for the Chairman, and possibly the Committee's Rapporteur, to be heard by the Economic and Social Council, and for the Chairman to participate in the human rights information campaign.

37. Mr. KOUZNETSOV said that it was not desirable to insist on the idea of an Optional Protocol, and that the Committee should rather focus its attention on the other questions mentioned by the Rapporteur in order to make its work more effective and to achieve greater consideration both from Governments and from other United Nations bodies. The idea of publishing a brochure setting out the Committee's objectives met with his approval, as did the suggestion that the Chairman or the Rapporteur should attend the meetings of the Economic and Social Council.

38. The USSR, in line with other countries, was examining the issue of optional protocols. The matter had been entrusted to the consideration of experts in international law, although it was likely that the Government, which had the final say in the matter, would ratify the Optional Protocol to the International Covenant on Civil and Political Rights. In respect of the Committee, he thought that it would perhaps be desirable to inform the Economic and Social Council, possibly through the report submitted to the Council by the Committee, that the latter had raised the problem and was waiting for a possible reaction from the Council. That would settle the issue of whether such a step should be taken. In spite of his personal interest in the issue, he did not consider that it was of vital importance.

39. Mr. WIMER ZAMBRANO observed that the idea of preparing an Optional Protocol had compelled the Committee to consider the meaning of its work and its objectives. That exercise had been valuable from a theoretical angle and would facilitate analysis of the reports which the Committee was to consider. The debate had shed light on a number of legal problems. It had also revealed the importance of the Committee's work and, unfortunately, the scant attention paid to it by public opinion, the press and non-governmental organizations.

40. The phenomenon was perhaps partly attributable to the fact that the Committee had not always expressed its opinions sufficiently clearly. It had not always highlighted the most blatant violations of social, economic and cultural rights affecting the population in a number of countries. He noted that each country should be dealt with in an impartial manner: for instance, it was not acceptable for France and Canada to be placed on the same footing as Chile or Romania.

41. It was also true that reports occasionally contained exaggerations, that the replies given to the Committee were not always correct and that it was difficult to come to a conclusion in the absence of criteria for distinguishing between matters of form and issues of substance.

42. As to whether countries possessed the political will to observe the minimum conditions of the Covenant, which it was also the Committee's task to determine, it had to be acknowledged that some of the countries that wished to establish such minimum conditions did not have the means to do so - hence the usefulness of Ms. Taya's idea of establishing several categories of standards. To conclude, he underscored the importance of classifying criteria that could be used to assess the content of the reports submitted to the Committee.

43. Mr. SPARSIS said that many suggestions for improving the effectiveness of the Committee's work had been put forward in the past two days and that the moment seemed opportune to establish an order of priorities. In his view, the first priority was the quality of the reports submitted to the Committee by Governments. While the developed countries possessed a large and skilled diplomatic staff, the developing countries, in contrast, had their reports written by persons who did not always possess the necessary qualifications. The young woman who had replied to questions on the report of Cyprus had been specially trained by ILO, where she had spent a month: the Committee might suggest that method to certain Governments.

44. The second priority was improving communications between the Committee and the Economic and Social Council. The Rapporteur and a number of experts had made specific proposals in that connection. They should be examined and the appropriate decisions taken.

45. The third priority was the establishment of minimum standards and the definition of criteria for assessing the results achieved by each country in implementing the rights covered by the Covenant.

46. The fourth priority was disseminating those rights and encouraging their implementation within countries. In most cases, lobbies, trade unions, employers and even bodies responsible for protecting the rights of women, young people or the elderly had never heard of the Covenant or of the work of the Committee. He wondered how the message might be put across at the national level. One possibility was to create national committees for economic, social and cultural rights, or to organize lectures and seminars.

47. Lastly, he expressed surprise that no representatives of non-governmental organizations, of WHO or of UNESCO were present in the room, despite the fact that some of the articles of the Covenant were of particular interest to those specialized agencies.

48. Mr. NENEMAN, in reply to the remarks by Mr. Glaiel, specified that in referring to the States' representatives who participated in the spring session of the Economic and Social Council, he had not intended to minimize their role. The only point he had wished to make was that most of those representatives were qualified individuals, with considerable knowledge, but that they could not be called upon to be experts on economic and social matters, contrary to what might be expected in view of the nature of the Council's work, as it met in the spring to debate social matters and in summer

to consider economic issues. He stressed the importance of familiarizing the Economic and Social Council with the Committee's work, as it was the Council that took decisions and adopted resolutions. He recalled that the Council received reports from bodies as diverse as the Commission on Human Rights, the Commission for Social Development, the Commission on the Status of Women or the Commission on Narcotic Drugs and observed that reports by those bodies were occasionally considered by the same representatives, who could not possibly possess in-depth knowledge of all the issues dealt with therein. He did not wish to question the competence of those representatives, but he wondered how they were able to judge, without certain points being explained to them.

49. Mr. ALSTON regretted that Mr. Simma was disturbed by the turn taken by the debate. In his view, the discussion had been highly productive as extremely interesting opinions of great value to the work of the Committee had been expressed, and it had clarified the Committee's situation and highlighted its priorities, the first of which was consideration of country reports. However, he did not agree with those who considered that the Committee's role was solely to examine reports. The debate had also revealed that there was no consensus within the Committee as to the very nature of economic, social and cultural rights. He endorsed the comments made by Mrs. Jiménez Butragueño and Mr. Wimer Zimbrano concerning the extremely relevant contribution of Ms. Taya and expressed the hope that the text would be distributed.

50. The CHAIRMAN also shared the view expressed by Mrs. Jiménez Butragueño and felt that the debate had been extremely useful. It was impossible to claim to know everything about economic, social and cultural rights, and the Committee must constantly examine its role and the means of fulfilling its mission. As Ms. Taya had observed, the fundamental consideration was an analysis of the very nature of economic, social and cultural rights, and she had rightly based her analysis on the following three levels: the basic needs of human beings, the extent to which economic, social and cultural rights were applied in the different States, and the ideal situation to which all countries aspired. Reference to those three levels might assist the Committee in examining reports by States and in evaluating the extent to which the relevant rights were applied in each country, bearing in mind its means and the objectives pursued. That was a very important idea, which the Committee should bear in mind when dealing with the issue of guidelines applicable to the preparation of reports, in order to allow States to set out more clearly their problems, needs and doubts. International co-operation could only stand to benefit.

51. With regard to the question of an Optional Protocol, he fully agreed that the Committee should informally consider possible means of enhancing the protection of economic, social and cultural rights, calling upon States to observe certain fundamental criteria and allowing submissions by individuals.

52. The Committee should direct its attention to the long term and seek ways of strengthening its role. It could, for example, adopt partial measures without reference to the Economic and Social Council or put forward proposals in order to increase its powers. It could also request the Council to propose amendments to the Covenant to States parties so as to enable the Committee to progress with its work and to draw up an Optional Protocol. In view of the small number of reports submitted, he felt that the Committee had time to consider those issues, while clearly defining its priorities so as to avoid losing sight of the purpose of its discussions.

53. In conclusion, he summarized the proposals made so far:

That the report of the Committee should be introduced to the Economic and Social Council by the Chairman or by a member of the Committee appointed by him;

That a briefing on recent developments within the United Nations system should be held each year, and that at least one member of the Committee should be responsible for preparing that meeting (he thanked the Rapporteur for having accepted that mission);

That the pre-sessional Working Group should meet sufficiently in advance of the Committee to allow States time to examine the questions put to them;

That the Centre for Human Rights should devote greater attention to issues relating to the Covenant as part of its programme of advisory services and its general information campaign on human rights;

That experts from outside the Committee should be invited to participate in the debate on article 11 as at the previous session;

That the Secretariat should publish a brochure on the work of the Committee in order to make it known to the general public.

54. If there was no objection, he would take it that those proposals were adopted.

55. It was so decided.

The meeting rose at 1.05 p.m.